IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
RFA Nos.91 of 1997 & 111 of 1997.

Judgment Reserved on: 13.11.2006.

Date of decision: 17.11.2006.

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1. **RFA No.91 of 1997**

L.A.C. & Another ….**Appellants**

Versus

Smt.Gurbakash Kaur & Another …**Respondents.**

2. **RFA No.111 of 1997**

Smt.Gurbakash Kaur & Another ….**Appellants**

Versus

L.A.C. & Another …**Respondents**

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting ?[1]

RFA No.91 of 1997

For the Appellants:	**Mr.Lokesh Thakur vice Mr.Shrawan Dogra, Advocate.**
For Respondents 1 to 3:	**Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.**
For Respondent No.4:	**Mr.M.S.Chandel, Advocate General with Mr.J.S.Guleria,Law Officer.**

RFA No.111 of 1997

For the Appellants:	**Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.**
For Respondent No.1:	**Mr.M.S.Chandel, Advocate General with Mr.J.S.Guleria,Law Officer.**
For Respondents 2 & 3:	**Mr.Lokesh Thakur vice Mr.Shrawan Dogra, Advocate.**

Deepak Gupta,J.

The State of Himachal Pradesh issued Notification under Section 4 of the Land Acquisition Act, 1894, (hereinafter referred to as the "Act") on 30.5.1990 which was published in the "Punjab Kesari" on 18.7.1990,

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?

in "The Tribune" on 15.7.1990 and in the "Official Gazette" on 23.6.1990, whereby two kittas of land comprised in Khasra Nos.918 and 928 in village Saproon, Tehsil and District Solan, measuring 418 square meters were sought to be acquired for the Himachal Pradesh State Electricity Board, hereinafter referred to as the "Board".

Gurbakash Kaur, Gajinder Pratap Singh and Barjinder Pratap Singh, hereinafter referred to as the "claimants", were the owners of the land. Thereafter, Notification under Section 6 was published in the year 1991 and vide award dated 17.5.1993 the Land Acquisition Collector of the Board determined a compensation payable to the claimants at Rs.119 per square meter.

The petitioners filed a Reference Petition under Section 18 of the Act which was referred for decision to the District Judge, Solan, who vide his award dated January 6, 1997 has determined the compensation at Rs.264 per square meter.

Aggrieved against this award of the Land Reference Court, appeals have been filed both by the claimants as well as by the Board. Both the appeals are being disposed of by this common judgment.

In support of their case seeking enhancement of compensation, the claimants examined three witnesses. PW-1 Tej Kaur has proved an agreement dated 25.1.1990 Ex.PA, whereby she had agreed to purchase 318 square meters of land from petitioner Gurbakash Kaur for a sum

of Rs.2,20,000/- It would be pertinent to mention that this agreement has not culminated into a sale deed.

PW-2 Deepender Kaur has stated that the agreement Ex.PA was executed in her presence and she has signed the same as a witness. Gurbakash Kaur appeared as PW-3. She has only stated that her land was acquired which was in Saproon and that it is flat land. In addition to this, the petitioners tendered in evidence two certified copies of sale deeds Ex.PG and Ex.PH. Both relate to Saproon.

On the other hand, the defendants examined only one witness who is the Naib Tehsildar and tendered in evidence certified copies of six sale deeds which were marked as D1 to D6.

The learned Court below has rightly discarded Ex.PA while determining the market value. This agreement was never actually acted upon. It is more than apparent that this agreement was a sham agreement and purportedly executed by one of the claimants herself with a view to enhance the price of the land.

This leaves the Court with only the eight certified copies of the sale deeds. None of the vendors or the vendees who were parties to the aforesaid sale deeds have been examined. The trial Court has discarded the certified copies of the sale deeds, Mark D1 to D6 filed by the Board, on the ground that no seller or purchaser has been produced to establish the sale of the land by the said sale deeds. Surprisingly, however, the learned trial Judge thought it fit to rely upon Ex.PG and

Ex.PH, certified copies of the sale deeds relied upon by the claimants, even though in these cases also neither the vendor nor the vendee has been produced.

Section 51-A of the Land Acquisition Act reads as follows:

> **"51-A.Acceptance of certified copy as evidence.-** In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document."

The certified copy of the document duly registered under the Registration Act can be accepted as evidence of the transaction. It would always be more appropriate and in the interest of justice if the vendor and vendee or at least one of them examined to show the genuineness of the transaction. Some evidence must also be led to show that the quality and situation of the land and the benefits and disadvantages of the land(s) which is the subject matter of certified copy of the sale deed vis-à-vis the land sought to be acquired. It is primarily the duty of the claimants under Section 18 to prove their case. It is well settled law that the claimant under Section 18 stands on the same footing as a plaintiff. In case the petitioner does not lead evidence or fails to prove his case then he must fail.

I am of the considered opinion that either the certified copies filed by both sides should have been

read in evidence and taken into consideration by trial Court or none of them could have been taken into consideration.

Mr.G.D. Verma, learned Senior Counsel for the claimants contended that the trial Judge rightly relied upon the certified copies of the sale deeds produced by the claimants. He, however, had no answer to the query that why the certified copies of the sale deeds produced by the Board should not be read in evidence and taken into consideration. Faced with this situation, he submitted that there is lack of evidence on record and the matter should be remanded to the trial Court.

In support of his case he has cited a number of judgments i.e. ***Cement Corpn. Of India Ltd. vs. Purya and Others 2004(8) SCC 270, Special Land Acquisition Officer vs. Indian Standard Metal Co.Ltd.2005 (9) SCC 759, Ranvir Singh and Another vs. Union of India 2005(12) SCC 59, KM Mohammed Haneefa and Others vs. State of Kerala 2003 (10) SCC 220 and Associated Cement Companies Ltd. vs. Jagan Nath and others 1998(2) Shim.L.C.92.***

I am afraid this contention cannot be accepted. In all the cases relied upon by Shri Verma the situation was totally different. In the present case, the claimants chose not to lead any evidence except what has been mentioned above. They did not choose to examine the purchaser or vendees of the sale deed. Therefore, their situation is the same as that of the Board. At this stage, after more than 16 years of the execution, it would not be appropriate to remand the case. Even

otherwise I am of the view that no case has been made out for remand. Till date no application has been filed by the claimants for leading additional evidence. The case cannot be remanded only for the purpose of allowing the claimants to fill up the lacunae in their case.

In fact as has been laid down by the Apex Court by virtue of Section 51-A the Court can read in evidence the certified copies of the sale deeds filed by the parties. A perusal of the eight certified copies of sale deeds, which are on record, show that all the sale deeds relate to Mauza Saproon i.e. the same Mauza from which the land of the petitioners has been acquired. The rate as worked out in all the sale deeds is as follows:-

Sr. No.	**Ex.**	**Date of Sale**	**Amount of land sold**	**Total Consideration**	**Rate per Sq.Mtrs.**
1.	PG	24.8.1989	70	18500	264
2.	PH	14.2.1989	91	33000	362
3.	D1	17.4.1990	369	30000	81.30
4.	D2	05.3.1990	171	10000	58.47
5.	D3	06.1.1990	90	11000	122
6.	D4	20.2.1990	188.5	20000	106
7.	D5	18.7.1989	166	8000	48
8.	D6	28.6.1989	208	15000	72

The total land which was subject matter of these eight sale deeds is 1353.5 Square Meters and the total consideration paid is Rs.1,45,500/-. Therefore, the rate per square yard works out to Rs.106.50 paise per square meter. The Land Acquisition Collector had already awarded Rs.113/-. Therefore, in my opinion, no case was made out for enhancement of the compensation.

In view of the above discussion, the appeal filed by the Board being RFA No.91 of 1997 is allowed and the award of the learned District Judge, Solan, in Land Reference Petition No.54-S/4 of 1993 is set aside and the Land Reference Petition filed by the claimants under Section 18 of the Act is ordered to be dismissed. Consequently, the appeal filed by the claimants for enhancement is also dismissed.

No order as to costs.

November 17, 2006 **(Deepak Gupta)**
(aks) **Judge**